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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Gordon H. Earhart, trustee of the Earhart
Family Revocable Trust, Rudy T. Escalante
and Laurie B. Escalante, Patricia Miller
and Jeffrey Miller, Linda Martinez, Scott
Hurst, Mark Blosser, Janie Hernandez,
Petra R. Lopez, and Raymond Vice and
Barbara Vice,

Plaintiffs,

v.

Union Pacific Railroad Company,
successor to Southern Pacific
Transportation Company, SFPP, L.P.
(formerly known as Santa Fe Pacific
Pipelines, Inc., formerly known as
Southern Pacific Pipelines, Inc.), Kinder
Morgan Operating L.P. "D", and Kinder
Morgan G.P., Inc.,

Defendants.

LEAD CASE NO. 2:15-cv-01092-DGC
(Consolidated with Case No. 2:17-cv-
03099-SPL)

AMENDED COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Gordon H. Earhart, trustee of the Earhart Family Revocable Trust, Rudy T. Escalante and Laurie B. Escalante, Patricia Miller and Jeffrey Miller, Linda Martinez, Scott Hurst, Mark Blosser, Janie Hernandez, Petra R. Lopez, and Raymond Vice and Barbara Vice (collectively "Plaintiffs"), allege the following against Union Pacific Railroad Company (formerly known as Southern Pacific Transportation Company) (the

1 “Railroad”) and SFPP, L.P. (formerly known as Santa Fe Pacific Pipelines, Inc. and
2 Southern Pacific Pipelines, Inc.), Kinder Morgan Operating L.P. “D”, and Kinder
3 Morgan G.P., Inc. (collectively, the “Pipeline”) (the Pipeline and Railroad collectively
4 are referred to herein as “Defendants”), based on personal knowledge with respect to
5 themselves and on information and belief derived from, among other things, investigation
6 of counsel and review of public documents as to all other matters:

7 **PARTIES**

8 1. Plaintiff Gordon H. Earhart, trustee of the Earhart Family Revocable Trust
9 is the fee owner of land in Pima County, Arizona that includes tax parcel number
10 21728001K, which is adjacent to the railroad right-of-way.

11 2. Plaintiffs Rudy T. Escalante and Laurie B. Escalante are the fee owners of
12 land in Pinal County, Arizona that includes tax parcel number 40215032A, which is
13 adjacent to the railroad right-of-way.

14 3. Plaintiffs Patricia Miller and Jeffrey Miller are the fee owners of land in
15 Pima County, Arizona that includes tax parcel number 221360070, which is adjacent to
16 the railroad right-of-way.

17 4. Plaintiff Linda Martinez is the fee owner of land in Pinal County, Arizona
18 that includes tax parcel number 405020500, which is adjacent to the railroad right-of-
19 way.

20 5. Plaintiff Scott Hurst is the fee owner of land in Maricopa County, Arizona
21 that includes tax parcel number 50444020S, which is adjacent to the railroad right-of-
22 way.

23 6. Plaintiff Mark Blosser is the fee owner of land in Pinal County, Arizona
24 that includes tax parcel number 41002001A, which is adjacent to the railroad right-of-
25 way.

26 7. Plaintiff Janie Hernandez is the fee owner of land in Pinal County, Arizona
27 that includes tax parcel number 405020560, which is adjacent to the railroad right-of-
28 way.

1 8. Plaintiff Petra R. Lopez is the fee owner of land in Maricopa County,
2 Arizona that includes tax parcel number 50444019C, which is adjacent to the railroad
3 right-of-way.

4 9. Plaintiffs Raymond Vice and Barbara Vice are the fee owners of land in
5 Pinal County, Arizona that includes tax parcel number 405032910, which is adjacent to
6 the railroad right-of-way.

7 10. Defendant Union Pacific Railroad Company, successor to Southern Pacific
8 Transportation Company, is a Delaware Corporation with its principal place of business
9 in Omaha, Nebraska (the "Railroad").

10 11. Defendant SFPP, L.P. is a Delaware limited partnership with its principal
11 place of business in the city of Orange in Orange County, California. Upon information
12 and belief, the partners of SFPP are citizens of the States of Texas and/or Delaware.
13 Defendant SFPP, LP acquired Santa Fe Pacific Pipelines, Inc., previously known as
14 Southern Pacific Pipelines, Inc. Defendant SFPP, L.P. is a subsidiary of Kinder Morgan
15 Energy Partners L.P., which is a subsidiary of Kinder Morgan, Inc.

16 12. Defendant Kinder Morgan Operating L.P. "D" is a Delaware limited
17 partnership with its principal place of business in Houston, Texas. Upon information and
18 belief, the partners of Kinder Morgan "D" are citizens of the States of Texas and/or
19 Delaware. Defendant Kinder Morgan Operating L.P. "D" is a subsidiary of Kinder
20 Morgan, Inc.

21 13. Defendant Kinder Morgan G.P., Inc. is a Delaware corporation with its
22 principal place of business in Houston, Texas. Similarly, Defendant Kinder Morgan G.P.,
23 Inc. is a subsidiary of Kinder Morgan, Inc.

24 14. Defendants SFPP, L.P., Kinder Morgan Operating L.P. "D", and Kinder
25 Morgan G.P., Inc. are collectively referred to herein as the "Pipeline."

26 **JURISDICTION AND VENUE**

27 15. Subject matter jurisdiction exists in this case pursuant to federal question
28 jurisdiction, 28 U.S.C. § 1331, because a substantial federal question exists as to

1 Plaintiffs' claims including the General Right-of-Way Act of 1875, 18 Stat. 482, 43
2 U.S.C. § 934, *et. seq.* ("1875 Act").

3 16. Additionally or alternatively, jurisdiction is proper pursuant to 28 U.S.C.
4 § 1332(a), because this dispute is between citizens of different states, and the amount in
5 controversy exceeds the sum of \$75,000, exclusive of interest and costs.

6 17. This Court has personal jurisdiction over Defendants SFPP, L.P., Kinder
7 Morgan Operating L.P. "D", and Kinder Morgan G.P., Inc. because they purposefully
8 avail themselves of the benefits of doing business in the State of Arizona by maintaining
9 a pipeline throughout Arizona, including in this District. Additionally, this Court has
10 personal jurisdiction over Defendant Union Pacific Railroad Company because it
11 purposefully avails itself of the benefits of doing business in the State of Arizona by
12 maintaining a railroad throughout Arizona, including in this District.

13 18. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) and (2).
14 Defendants do business in the State of Arizona and in this District and are subject to
15 personal jurisdiction in the State of Arizona, and therefore reside in this District for venue
16 purposes pursuant to 28 U.S.C. § 1391(c)(2). Additionally, a substantial part of the events
17 giving rise to the claims Plaintiffs assert in this lawsuit occurred in this District, because
18 the real property that forms the subject matter of this action is located in the State of
19 Arizona and the conduct complained of herein occurred, in whole or in part, within the
20 State of Arizona and/or was directed at residents and citizens of the State of Arizona.

21 **FACTUAL ALLEGATIONS**

22 **A. Historical Context of the Railroad's Right-of-Way**

23 19. As America spread west in the first half of the 19th century, its frontier
24 expanded from the Mississippi River to the coast of California and the Oregon Territory.
25 Access to the great expanses of the prairies and mountains, as well as to the states and
26 territories on the Pacific Coast, was necessary.

27 20. Beginning in approximately 1850, as described by the United States
28 Supreme Court, Congress embarked upon a policy of subsidizing railroad construction by

1 paying for it with “lavish grants from the public domain.”

2 21. With the onset of the Civil War, the need for a transcontinental railroad
3 took on particular urgency and, starting in 1862, the government lavished sweeping land
4 grants on the railroads in order to build several transcontinental railroads.

5 22. President Abraham Lincoln signed the Pacific Railroad Act on July 1,
6 1862, and he and his successors signed subsequent acts. These initial Pre-1871 Acts
7 granted vast areas of land to several transcontinental railroads, encouraging them to build
8 tracks across the nation.

9 23. After the Civil War, Congress passed the General Right-of-Way Act of
10 1875. Like the earlier railroad acts, this legislation provided the railroads with a right-of-
11 way through public lands for the construction of a railroad; however, the 1875 Act made
12 it clear that it was providing the railroads with “mere easements” over the land on which
13 they could lay their tracks and run their trains. The railroads were given no fee interest in
14 the property itself; rather, title remained in the federal government.

15 24. The United States government owned the subsurface of the railroad right-
16 of-way at the time of the 1875 Act conveying railroad rights-of-way through the public
17 lands.

18 25. Under the 1875 Congressional Act, the railroads were granted only a
19 surface easement, and the right to use the subsurface only as necessary to support the
20 surface operation of the railroad. The Railroad’s use and occupation of the surface
21 created no right of possession in the subsurface.

22 26. Plaintiffs are successors in title to what were once public lands through
23 which the Railroad rights-of-way now pass.

24 **B. The Railroad Leased, But Did Not Own, the Subsurface of Its Right-of-**
25 **Way.**

26 27. In the 1950s, the Railroad’s predecessor began constructing oil and gas
27 pipelines to run below ground, beneath the Railroad’s right-of-way in these Western
28 states, including within the State of Arizona.

1 28. The Pipeline operates a pipeline system through the Western and
2 Southwestern United States that is more than 3,000 miles in length, including
3 approximately 505 miles within the State of Arizona. The system distributes refined
4 petroleum products (principally diesel, all grades of gasoline, and jet fuel).

5 29. More than half the length of the pipeline is located beneath the Railroad's
6 surface easement, unlawfully utilizing the subsurface rights of the actual fee owners.

7 30. In the mid-1950's, when construction of the Pipeline began, the Railroad's
8 predecessor and the predecessor of the Pipeline were sister subsidiaries of Southern
9 Pacific Corporation.

10 31. The Railroad claimed for itself or purported to grant the right to construct
11 an underground pipeline within the subsurface underlying the Railroad's right-of-way.
12 Although serious doubts existed as to the Railroad's rights to the subsurface beneath its
13 right-of-way, the two sister companies entered into master agreements in 1955 and 1956
14 wherein the Railroad rented portions of the subsurface under its right-of-way to the
15 Pipeline.

16 32. The sister companies built pipelines underneath the Railroad's rights-of-
17 way irrespective of what ownership interest the Railroad had actually acquired in this
18 subsurface real property pursuant to the 1875 Act and irrespective of the fact that the
19 Railroad only acquired a surface easement for its railroad purposes and has and had no
20 legal rights whatsoever to occupy the subsurface or to grant subsurface easements for
21 purposes of constructing or operating the pipeline.

22 33. The sister companies chose to proceed under this arrangement despite the
23 United States Supreme Court's decision, in 1942, holding that railroads merely had an
24 easement over the surface of the land, and that title to the subsurface remained in the
25 federal government (or its grantee, if any) under the 1875 Act.

26 34. Recognizing the limitations of the 1875 Act, on several occasions, counsel
27 for the Railroad questioned whether it had sufficient property rights to grant easements to
28 the Pipeline.

1 35. In fact, in 1956, an in-house attorney for the Railroad's predecessor sent a
2 letter to the Pipeline explaining that the Railroad appeared to have the right to grant
3 pipeline easements in the subsurface under rights-of-way it obtained via the pre-1871
4 Acts. But since the 1875 Act provided only an easement, they would have to obtain
5 consent from the adjoining landowner in order to use the subsurface for a pipeline.

6 36. Despite acknowledging the ramifications of attempting to lease property
7 rights it did not own, the Railroad nevertheless decided to continue to grant purported
8 easements to the Pipeline.

9 37. In 1983, the parent company of the Railroad and Pipeline announced a
10 merger with Santa Fe Railroad, which eventually led to the Railroad being sold to a third
11 party. Because the Railroad and Pipeline were no longer sister companies and up to that
12 point the rental agreement was not negotiated at arm's length, in 1991, the Railroad sued
13 the Pipeline seeking higher rent payments for the use of the subsurface below the
14 Railroad's right-of-way.

15 38. In April of 1994, the parties to the 1991 lawsuit negotiated a settlement
16 agreement, which rescinded the 1983 easement rental agreement, confirmed the
17 purported pipeline easement rights, compromised the parties' various existing claims, and
18 pursuant to which the Pipeline's predecessor paid over \$5 million in return for the
19 Railroad's dismissal of claims and causes of action. The settlement agreement provided
20 that the Railroad could seek an increase in rent to fair market value every ten years
21 following January 1, 1994.

22 39. In July of 1994, the Railroad and the Pipeline's predecessor entered into an
23 amended and restated easement agreement ("AREA"), which purported to state that the
24 Railroad granted easements to the Pipeline's predecessor for the transportation of its
25 petroleum, natural gas, and other products, and reiterated a procedure and mechanism to
26 determine the amount of rent that the Pipeline's predecessor would pay the Railroad for
27 what purported to be perpetual easements in the subsurface of the right-of-way, which
28 was to be calculated at fair market value.

1 40. In August 1994, when the two companies could not reach an agreement on
2 the new rental amount, the Railroad filed suit to determine the fair market value of the
3 purported easements. Ultimately, judgment was entered that in January 1994 the base rent
4 for the Pipeline's use of the subsurface was approximately \$5 million annually.

5 41. For the ten year period beginning in 2004, the Railroad and Pipeline again
6 could not agree on the amount of the annual increase in rent. The Railroad again sued the
7 Pipeline seeking another ten-year increase in rent to fair market value of the alleged
8 easements granted by the Railroad to the Pipeline.

9 42. In April of 2012, after more than 250 trial days, a trial court in Los
10 Angeles, California found that pursuant to the AREA, the base annual rent owed from the
11 Pipeline to the Railroad commencing on January 1, 2004 was \$14,080,487; that back rent
12 due as of the time of the judgment was \$81,589,584; and that prejudgment interest was
13 payable by the Pipeline to the Railroad in the amount of \$19,372,195.50.

14 43. The Pipeline appealed the trial court's decision, questioning, among other
15 things, whether the Railroad had sufficient interest in the land beneath its right-of-way to
16 grant the alleged subsurface easements and to collect rent for their use.

17 44. The California Court of Appeals agreed with the Pipeline and ruled that the
18 1875 Act did not provide the Railroad with sufficient property interests to allow the
19 Railroad to collect rent for the Pipeline's use of the subsurface beneath the Railroad's
20 right-of-way.

21 45. The court explained that under the 1875 Act the Railroad was granted a
22 mere easement of the surface and had no rights to the subsurface.

23 46. The California Court of Appeals further ruled that the fee owners of the
24 right-of-way, including these Plaintiffs, and not the Railroad, had the sole and exclusive
25 right to grant easements to the Pipeline for a pipeline below the Railroad's right-of-way
26 and to collect rents from such use and occupancy by the Pipeline.

27 47. The opinion specifically noted that the Railroad, in some instances, may
28 have sought and collected rent for the use of property owned by others—including

1 private landowners.

2 48. The Railroad's using or permitting the Pipeline to use the limited railroad
3 purpose right-of-way to carry petroleum through a subsurface pipe was an improper and
4 illegal use outside the scope of the Railroad's easement, which terminated the Railroad's
5 easement.

6 49. The Pipeline's use of the subsurface of the right-of-way to convey
7 petroleum products may be severed from the railroad use and terminated.

8 **C. Without Permission, the Defendants Trespassed on and Profited from**
9 **Plaintiffs' Land.**

10 50. Because the Railroad did not have property rights in the subsurface of its
11 right-of-way pursuant to the 1875 Act, the alleged easement agreements granted by it to
12 the Pipeline were of no effect and did not convey any interest to the Pipeline. Therefore,
13 the Railroad could not convey any rights in the land owned in fee by Plaintiffs.

14 51. Plaintiffs are fee owners of the real property that runs adjacent to the
15 railroad bed owned by the Railroad and beneath the Railroad's right-of-way to the center
16 line of the right-of-way, including land within which the pipeline was installed and is
17 operated.

18 52. The Railroad and Pipeline did not obtain an easement or other right to use
19 the subsurface of Plaintiffs' land.

20 53. The purported easement agreements granted by the Railroad to the Pipeline
21 were and are invalid. The Pipeline, without compensation or permission, used the
22 Plaintiffs' subsurface land by installing its pipeline on their property.

23 54. Upon information and belief, the Pipeline has benefitted substantially from
24 the use of the land of Plaintiffs, because it would have faced higher costs had it fairly
25 negotiated an arm's-length transaction with Plaintiffs.

26 55. Furthermore, the Railroad without reimbursing or otherwise compensating
27 the Plaintiff property owners, charged the Pipeline rent for the use of property. The
28 Plaintiffs have received no compensation for the unauthorized use of their land.

1 56. Defendants' wrongful conduct is ongoing and continuing, and has caused
2 and continues to this day to cause harm to Plaintiffs.

3 57. Upon information and belief, the Railroad knowingly engaged in a plan to
4 unlawfully deprive Plaintiffs of their property rights by granting to the Pipeline the
5 alleged right to construct a pipeline within the subsurface of the Railroad's right-of-way
6 in excess of the Railroad's property rights and without notice or compensation to
7 Plaintiffs.

8 58. Upon information and belief, as early as the 1950s, the Railroad's
9 predecessor-in-interest recognized that the Railroad did not have sufficient legal title to
10 purportedly grant an easement within the subsurface of the Railroad's right-of-way to
11 construct and operate an oil and gas pipeline.

12 59. Upon information and belief, employees, agents, or representatives of the
13 Railroad's predecessor-in-interest recommended that the company justly compensate the
14 true fee owners of the subsurface, Plaintiffs, which the Railroad's predecessor-in-interest
15 wrongfully failed and refused to do.

16 60. Upon information and belief, the Pipeline has recognized for decades that
17 the Railroad lacked sufficient title to convey easements to the Pipeline in tracts of land
18 that were granted to the Railroad pursuant to the 1875 Act, but have knowingly and
19 deliberately transmitted petroleum products through the Plaintiffs' real property and
20 withheld rents from the lawful owners of the subsurface that they wrongfully use and/or
21 occupy.

22 61. Plaintiffs were not aware and could not have discovered through reasonable
23 diligence, that the pipeline was not being used for legitimate railroad purposes.

24 62. Moreover, Plaintiffs were not aware, and could not have discovered with
25 reasonable diligence, that the Railroad was collecting rent from the Pipeline for the use of
26 Plaintiffs' subsurface land.

27 63. The earliest Plaintiffs could have learned or suspected the Pipeline was
28 trespassing on their land and the Railroad was collecting rent was November 5, 2014

1 when the Second District Court of Appeals of California issued an opinion explaining the
2 Railroad did not have sufficient property interests from the 1875 Act to grant easements
3 or charge rent for the subsurface underneath its right-of-way.

4 64. Before the date of the California Court of Appeals' decision, Plaintiffs did
5 not discover, and did not know of facts that would have caused a reasonable person to
6 suspect, both that they had suffered and continue to suffer harm and that such harm was
7 caused by the Defendants' wrongful conduct.

8 65. Further, the Railroad and Pipeline concealed their actions from Plaintiffs
9 with the intent to deceive and induce them to refrain from demanding compensation for
10 the Railroad's and Pipeline's unauthorized commercial use of their lands and acted in
11 such a fashion as to indicate that they had the right to install and maintain a pipeline or
12 collect rent therefrom despite their knowledge that they had no such right. Plaintiffs
13 justifiably relied on the Railroad or Pipeline to inform them of the Railroad's and
14 Pipeline's intent to unlawfully use and profit from the use of Plaintiffs' lands. As a result
15 of the fraudulent concealment of the trespass, Plaintiffs assert tolling of the applicable
16 statute of limitations affecting the causes of action by Plaintiffs.

17 66. Moreover, Plaintiffs assert their claims were further tolled during the
18 pendency of the class actions asserted *Clements et. al v. Union Pacific Railroad*
19 *Company et. al*, Case No. 4:15-cv-00191 (D. Ariz.) and *Valenzuela et. al v. Union Pacific*
20 *Railroad Company et. al*, Case No. 2:15-cv-01092-DGC (D. Ariz.).

21 67. Because the Railroad and Pipeline are not the owners of the property where
22 the pipeline was laid, they have trespassed and been unjustly enriched for over 50 years,
23 and they continue to do so today. Due to the Railroad's and Pipeline's actions, Plaintiffs
24 are seeking to recover damages, exemplary and/or punitive damages, restitution,
25 attorneys' fees, and pre- and post-judgment interest, and a declaration that they are the
26 true owners of the property underneath the Railroad's right-of-way and that the Railroad
27 and Pipeline cannot profit or collect rent from the land owned by Plaintiffs, and to quiet
28 title in the subsurface real property in the Plaintiffs' names free and clear of any claimed

1 interests of Defendants, and possession of their real property.

2 **FIRST CAUSE OF ACTION**

3 **(DECLARATORY JUDGMENT)**

4 68. Plaintiffs reallege paragraphs 1-67.

5 69. An actual dispute and controversy presently exists between Plaintiffs and
6 Defendants concerning their respective rights and duties to real property situated in the
7 subsurface beneath the Railroad's right-of-way.

8 70. The Railroad contends that it holds sufficient legal right and title to
9 purportedly grant easements to third parties, including the Pipeline, to occupy the
10 subsurface of the right-of-way, and to collect rents from such occupancy.

11 71. The Pipeline occupies the subsurface of the right-of-way, and derives a
12 commercial benefit from said occupancy, without the consent of Plaintiffs and without
13 payment of rents to Plaintiffs.

14 72. Plaintiffs are entitled to a declaration that under the 1875 Act, Defendants
15 are not granted sufficient title or interest to permit and/or undertake the construction,
16 maintenance, or operation of a pipeline within the subsurface of the right-of-way, and
17 further that Plaintiffs are the true owners in the subsurface of the right-of-way.

18 73. Plaintiffs are entitled to a declaration that neither the Railroad nor the
19 Pipeline have prescriptive rights with respect to the subsurface of the right-of-way.

20 74. A judicial determination of the rights and responsibilities of the parties over
21 the real property in question is necessary and appropriate at this time.

22 WHEREFORE, pursuant to Rule 57 of the Federal Rules of Civil Procedure and
23 28 U.S.C. § 2201, Plaintiffs request that the Court enter its judgment declaring that
24 Defendants have no legal right to exercise dominion and control over, or to use, land
25 owned by Plaintiffs or collect rent or profit from the use of Plaintiffs' land.

26 **SECOND CAUSE OF ACTION**

27 **(TRESPASS)**

28 75. Plaintiffs reallege paragraphs 1-67.

1 76. Plaintiffs are fee owners of the real property beneath the Railroad's right-
2 of-way to the center line of the right-of-way, including land within which the pipeline
3 was installed and is operated.

4 77. The Railroad, by and through the 1875 Act, acquired a surface easement
5 and right-of-way solely for its railroad purposes.

6 78. The Railroad did not, by virtue of the 1875 Act, acquire a fee interest in the
7 subsurface below its surface right-of-way.

8 79. Although the Railroad acquired solely a surface easement for its railroad
9 purposes only, the Railroad purported to grant easements to the Pipeline for the
10 construction and operation of a pipeline in the subsurface of the Railroad's right-of-way.

11 80. The Defendants intentionally entered upon Plaintiffs' subsurface property.

12 81. The Railroad's continuing claim to possess the authority to grant easements
13 in the subsurface underlying its right-of-way, to the Pipeline and to others, is an ongoing
14 invasion of Plaintiffs' fee ownership of the land without authority or permission and
15 amounts to a continuing trespass on Plaintiffs' fee ownership in their land.

16 82. The Pipeline constructed and operates the pipeline, and still transports
17 petroleum products through the pipeline beneath the subsurface of the Railroad's right-
18 of-way, which is actually owned by Plaintiffs.

19 83. Because the Railroad did not own or acquire Plaintiffs' fee ownership
20 interest in the right-of-way, including Plaintiffs' ownership in the subsurface of the right-
21 of-way, and because the Railroad had no authority to violate Plaintiffs' fee ownership by
22 purportedly granting easements to the Pipeline, the Pipeline's building and maintaining a
23 pipeline as well as the transmission of petroleum products through their pipeline is a
24 wrongful entry and invasion of Plaintiffs' fee ownership interest in the exclusive
25 possession of their property.

26 84. The construction, maintenance, and operation of a pipeline to transmit
27 petroleum through the subsurface of the right-of-way was and is an improper and illegal
28 use outside the scope of Railroad's easement, which terminated the Railroad's easement,

1 and thus, the Railroad lacks authority or permission to possess, occupy, or enter the land
2 of Plaintiffs.

3 85. Plaintiffs did not give permission for the Railroad's or the Pipeline's entry.

4 86. Neither Defendant Pipeline nor its predecessors have secured any lawful
5 easements or sought condemnation or obtained by any other means a lawful right to enter
6 the land of Plaintiffs to install, maintain, and operate a pipeline.

7 87. Alternatively, the Railroad and the Pipeline exceeded the scope of
8 Plaintiffs' permission.

9 88. The Pipeline's invasion of Plaintiffs' interest in the exclusive possession of
10 their subsurface rights in their property is an act of trespass.

11 89. The Pipeline's transmission of petroleum products through the pipeline is
12 an ongoing invasion of Plaintiffs' fee ownership of the land without authority or
13 permission and amounts to a continuing trespass on Plaintiffs' fee ownership in their
14 land.

15 90. Defendants' trespass is continuing and could be abated.

16 91. Additionally or alternatively, Defendants' trespass is permanent, and has
17 resulted in diminution of the value of the Plaintiffs' real property.

18 92. Due to the Defendants' trespass, Plaintiffs have suffered damages,
19 including the invasion of their exclusive rights to possess and occupy their subsurface
20 property.

21 93. Plaintiffs have actually been injured.

22 94. The Railroad's and the Pipeline's conduct were each substantial factors in
23 causing injury to the Plaintiffs.

24 95. As a direct and proximate result of Defendants' trespasses upon the land of
25 Plaintiffs, Defendants have realized substantial revenue and profits from the commercial
26 occupation and use of land owned by Plaintiffs, but have failed to pay any rents, revenue,
27 or profits to Plaintiffs.

28 96. Additionally, as a direct and proximate result of Defendants' actions and

1 continuing trespass, Plaintiffs have been damaged by deprivation of the value of their
2 land, of their right to determine possession and use of their land, including whether to
3 accept the risks associated with the maintenance and operation of a high-pressured
4 petroleum pipeline on their land, and by the damage to their land.

5 97. Through concerted action, Defendants entered into agreements providing
6 for Defendant Pipeline's installation, maintenance, and use of a pipeline on land
7 belonging to Plaintiffs, and further providing for Defendant Pipeline to pay Defendant
8 Railroad rent over a period of years for the purported right to install, maintain, and use a
9 pipeline on land belonging to Plaintiffs.

10 98. Defendants have acted with malice or have shown a reckless and
11 outrageous indifference to the highly unreasonable risk of injury they have caused
12 Plaintiffs, and have acted with a reckless disregard and conscious indifference to the
13 rights of Plaintiffs.

14 99. Defendants' trespass is and was malicious, wanton, oppressive, and/or
15 fraudulent in nature.

16 WHEREFORE, Plaintiffs request a judgment against Defendants for damages
17 from Defendants' trespasses and for the diminution in value of their property, and
18 punitive damages in an amount sufficient to deter further intentional or reckless acts by
19 Defendants, in an amount to be proved at trial.

20 **THIRD CAUSE OF ACTION**

21 **(QUIET TITLE)**

22 100. Plaintiffs reallege paragraphs 1-67.

23 101. Plaintiffs are fee title holders of the land under the Railroad's right-of-way.
24 Plaintiffs' fee ownership is burdened only by a limited easement for the use of the surface
25 for railroad purposes only.

26 102. As the fee title holders of the subsurface, Plaintiffs have the exclusive right
27 to possession of the subsurface of the right-of-way.

28 103. Defendants have unlawfully occupied and are in possession of the

1 subsurface beneath the Railroad's right-of-way, without the consent of the Plaintiffs.

2 104. Defendants have asserted a purported legal claim and title to occupy, use,
3 and possess the subsurface of the right-of-way.

4 105. The Railroad has asserted a purported legal claim and title to grant
5 easements in the subsurface of the right-of-way and to charge and collect rents from third
6 parties, including the Pipeline, for occupation, use, and possession of the subsurface of
7 the right-of-way.

8 106. Defendant Pipeline has asserted purported legal claim and right to use the
9 subsurface to transmit petroleum products through an unlawfully-constructed and
10 maintained pipeline located within Plaintiffs' property.

11 107. Defendants' claimed rights in the subsurface of the right-of-way are
12 adverse to those of Plaintiffs, and threaten Plaintiffs' quiet use and enjoyment of their fee
13 interest in their real property.

14 108. The claims of Defendants, and each of them, are without merit and
15 Defendants have no right, title, or interest whatsoever in the above-described real
16 property or any part thereof.

17 WHEREFORE, Plaintiffs demand judgment quieting title in the aforementioned
18 subsurface real property solely in their respective names, free and clear of any claimed
19 interest by Defendants, and each of them, as of the date upon which the Defendants first
20 claimed the right to lease and/or to occupy the real property, to be determined at trial, or
21 alternatively, as of November 5, 2014, when the California Court of Appeals issued its
22 opinion holding Defendant Railroad did not have sufficient property interests to collect
23 rent from or permit the Pipeline to use the subsurface beneath its right-of-way.

24 **FOURTH CAUSE OF ACTION**

25 **(UNJUST ENRICHMENT)**

26 109. Plaintiffs reallege paragraphs 1-67.

27 110. Plaintiffs are fee title holders of a portion of the Railroad's right-of-way.

28 111. Plaintiffs' fee ownership of the right-of-way includes the subsurface and

1 aerial rights of the right-of-way, and Plaintiffs' land is now burdened with a surface
2 railroad easement for railroad purposes only.

3 112. The Railroad negotiated with the Pipeline for rent payments by the Pipeline
4 for the use of the subsurface.

5 113. The Railroad realized monetary benefits and rent payments from the
6 Pipeline for those subsurface rights, without payment to the Plaintiffs.

7 114. The Railroad was aware that it received the benefit of the use of Plaintiffs'
8 subsurface property rights without compensating Plaintiffs.

9 115. The Railroad does not own any title and does not have permission to use
10 the subsurface or aerial rights above and below the right-of-way on the surface, but has
11 received substantial monetary compensation and benefit without payment to the
12 Plaintiffs, such that the retention of payments by the Railroad made by the Pipeline is
13 unfair, unjust, and inequitable.

14 116. Since the Railroad has realized enormous monetary benefit for the improper
15 use of Plaintiffs' subsurface rights in their property, the Railroad has been unfairly and
16 unjustly enriched and owes restitution to the Plaintiffs for the use and rent collected by
17 the Railroad for illegal and unauthorized subsurface easements it granted to the Pipeline.

18 117. Plaintiffs are entitled to damages for the value of all rents and monetary
19 benefits received by the Railroad for all improper and illegal easements granted to the
20 Pipeline since the 1950's.

21 118. The Pipeline, as successors to the original corporate affiliate of the
22 Railroad's predecessor, constructed a pipeline within Plaintiffs' property without notice
23 to Plaintiffs, and without negotiating or paying for the right to use the subsurface of the
24 right-of-way.

25 119. Upon information and belief, the Pipeline's predecessor-in-interest would
26 have faced substantial additional cost and delay if it had fairly negotiated with and
27 compensated the owners of the property at issue at the time the pipeline was constructed,
28 and unjustly, unfairly, and inequitably received the benefit of the use of the property.

1 120. The Pipeline, as corporate affiliates of the Railroad, occupied the
2 subsurface of the Railroad's right-of-way for decades by payment of rents that were less
3 than the fair market value that would have been charged in an arm's-length transaction.

4 121. By virtue of the wrongful acts herein described, the Pipeline established a
5 considerable market share and dominance of the oil and gas market, with more than 50%
6 of their pipeline in the Western and Southwestern United States passing within the
7 Railroad's right-of-way.

8 122. The Pipeline realized enormous cost savings and profits derived from
9 operating the pipeline through this territory without payment of just compensation to the
10 property owners, including the Plaintiffs.

11 123. The Pipeline has enjoyed an unjust and unfair competitive advantage over
12 other pipeline companies who properly paid for and secured the right to build its
13 pipelines.

14 124. The Pipeline is aware of the benefits it has received from and at the expense
15 of the Plaintiffs.

16 125. Since the Pipeline has realized enormous monetary benefit for the improper
17 use of Plaintiffs' subsurface rights in their property, the Pipeline has been unfairly and
18 unjustly enriched and owes restitution to the Plaintiffs for the use and rent of Plaintiffs'
19 real property.

20 126. Plaintiffs are entitled to damages for the value of all monetary benefits
21 received by the Pipeline for their improper and illegal occupation and use of the
22 subsurface of these rights-of-way since the 1950's.

23 127. Plaintiffs were, by virtue of the Defendants' conduct, deprived of
24 compensation for the use of their lands, by condemnation or by negotiated payment for
25 the easement, rents, or purchase of the subsurface, and were thereby impoverished.

26 128. Additionally or alternatively, Plaintiffs have suffered a diminution in the
27 value of their real property by virtue of the construction and operation of the pipeline.

28 129. Additionally or alternatively, Plaintiffs will be required to repair and restore

1 the subsurface of their real property after Defendants' wrongful occupation is terminated.

2 130. Plaintiffs lack an adequate remedy at law.

3 131. Defendants' conduct is and was malicious, wanton, oppressive, and/or
4 fraudulent in nature.

5 WHEREFORE, Plaintiffs demand recovery of benefits that were unjustly obtained
6 and retained by Defendants, for a constructive trust in favor of Plaintiffs to be placed
7 upon the benefits and proceeds received by Defendants as a result of their violation of the
8 Plaintiffs' rights, for recovery of punitive damages, for Plaintiffs' costs and fees, and for
9 any other and further relief as the Court may deem just and proper.

10 **FIFTH CAUSE OF ACTION: EJECTMENT AND/OR POSSESSORY ACTION**

11 132. Plaintiffs reallege paragraphs 1-67.

12 133. This is an action to recover possession of real property located in the State
13 of Arizona.

14 134. Plaintiffs are fee title holders of land under the Railroad's right-of-way.
15 Plaintiffs' fee ownership is burdened only by a limited easement for the use of the surface
16 for railroad purposes only.

17 135. Pursuant to Ariz. Rev. Stat. § 12-1251, a person having a valid subsisting
18 interest in real property and a right to immediate possession thereof may recover the
19 property by action against any person acting as owner, landlord, or tenant of the property
20 claimed.

21 136. The construction, maintenance, and operation of a pipeline to transmit
22 petroleum through the subsurface of the right-of-way was and is an improper and illegal
23 use outside the scope of Railroad's easement, which terminated the Railroad's easement,
24 and thus, the Railroad lacks authority or permission to possess, occupy, or enter the land
25 of Plaintiffs.

26 137. Pipeline lacks authority or permission to possess, occupy, or enter the land
27 of Plaintiffs.

1 138. Alternatively, Pipeline's use of the subsurface of the right-of-way to
2 convey petroleum products may be severed from the railroad use and terminated.

3 139. As the fee title holders of the subsurface, Plaintiffs have the exclusive right
4 to possession of their property.

5 140. Alternatively, Plaintiffs have a legal right and interest in the land under
6 Railroad's right-of-way and have a claim for possession of the subject real property that
7 is superior to that of Defendants.

8 141. Defendants have unlawfully occupied and are in possession of real property
9 owned by Plaintiffs, and/or in which Plaintiffs have a superior right of possession.

10 142. Defendants have failed and refused to cease their occupation of the real
11 property.

12 143. Plaintiffs have sustained damages as a direct and proximate result of
13 Defendants' wrongful occupation of the property.

14 WHEREFORE, Plaintiffs demand judgment for possession of the property and the
15 award of rents, profits, the reasonable cost of repair or restoration of the property to its
16 original condition, the costs of this action, and other damages which arise from the
17 Defendants' unlawful possession of the property.

18 **SIXTH CAUSE OF ACTION: INVERSE CONDEMNATION**

19 144. Plaintiffs reallege paragraphs 1-67.

20 145. Plaintiffs are fee title holders of land under the Railroad's right-of-way.
21 Plaintiffs' fee ownership is burdened only by a limited easement for the use of the surface
22 for railroad purposes only.

23 146. The Defendants have the power of eminent domain granted by Ariz. Rev.
24 Stat. § 12-1111.

25 147. Railroad did not acquire a fee interest in the subsurface below its surface
26 right-of-way and did not have a sufficient property interest in the subsurface below its
27 right-of-way to convey any property interest whatsoever to Pipeline.
28

1 148. Pipeline, purportedly through an agreement with Railroad, entered upon the
2 land of Plaintiffs and has installed, maintained, and operated thereon its pipeline, without
3 permission or right, in the subsurface below the right-of-way. Defendants substantially
4 participated in the planning, approval, construction, or operation of the pipeline. In other
5 words, Defendants constructed and/or developed or caused and/or allowed to be
6 constructed or developed a public improvement that substantially interfered with
7 Plaintiffs' property rights.

8 149. The Defendants utilized Plaintiffs' fee ownership rights in the subsurface of
9 the right-of-way without paying Plaintiffs and without exercising their condemnation
10 rights.

11 150. The Defendants' conduct in utilizing Plaintiffs' subsurface rights for their
12 own purposes for the construction and operation of a pipeline amounts to a taking of
13 Plaintiffs' property interest in their subsurface rights.

14 151. The taking of Plaintiffs' subsurface rights is for a public purpose as
15 authorized by the Arizona Legislature such that Plaintiffs' subsurface rights can only be
16 taken by the proper exercise of eminent domain powers pursuant to Arizona law and
17 payment to Plaintiffs, but the Defendants have taken Plaintiffs' private property for a
18 public use without just compensation being paid by any of the Defendants having
19 instituted any formal proceedings.

20 152. Defendant's unauthorized taking of Plaintiffs' subsurface rights by
21 constructing and operating a pipeline is the substantial cause of damages to Plaintiffs'
22 property.

23 153. As a direct and proximate result of the Defendants' taking of Plaintiffs'
24 subsurface rights, Plaintiffs are entitled to damages for the inverse condemnation of their
25 land, compensation for the value of the subsurface rights that have already been taken
26 and sold, and for attorneys' fees and costs in an amount to be proved at trial.

27 WHEREFORE, Plaintiffs demand damages for the inverse condemnation of their
28 land, compensation for the value of the subsurface rights that have already been taken

1 and sold, and for attorneys' fees and costs in an amount to be proved at trial.

2 **SEVENTH CAUSE OF ACTION**

3 **(TO RECOVER RENTS OR FOR THE USE OF REAL PROPERTY)**

4 154. Plaintiffs reallege Paragraphs 1-67.

5 155. Defendants have held or occupied lands without an agreement with
6 Plaintiffs for the payment of rents.

7 156. Pursuant to Ariz. Rev. Stat. § 12-1271, Plaintiffs are entitled to recover
8 from Defendants rents, or a fair and reasonable satisfaction for the use and occupation of
9 Plaintiffs' real property.

10 WHEREFORE, Plaintiffs pray for recovery of the fair market value of rents or a
11 fair and reasonable satisfaction for the Defendants' use of Plaintiffs' real property, for
12 their costs and attorneys' fees, and for any other and further relief as the Court may deem
13 just and proper.

14 **EIGHTH CAUSE OF ACTION**

15 **(ACCOUNTING)**

16 157. Plaintiffs reallege paragraphs 1-67.

17 158. As set forth above, Defendants have received unlawful benefits from
18 Plaintiffs.

19 159. Plaintiffs are entitled to an accounting from Defendants of these benefits
20 and profits.

21 160. As occupants of the dominant estates, Defendants occupy a special legal
22 relationship to Plaintiffs, who are owners of the servient estates.

23 161. As the occupants of the dominant estates, Defendants owe Plaintiffs, who
24 are owners of the servient estates, a duty to account for benefits that Defendants have
25 obtained from the servient estates.

26 162. Defendants have wrongfully obtained benefits from the unlawful use of
27 Plaintiffs' property for nearly six decades.

28 163. Defendants were initially affiliated companies, and the negotiated rent

1 payments were not the result of arm's-length transactions between and amongst them.

2 164. Defendants have been enriched by the collection of rents, in the Railroad's
3 case, and by the Pipeline's developing a commanding share of the oil and gas market
4 through the use and occupancy of the pipeline.

5 165. By virtue of their misconduct, Defendants avoided the costs and obligations
6 of legally acquiring the rights to the use of the subject properties.

7 166. Defendants concealed their conduct (including their profits) from Plaintiffs.

8 167. The benefits wrongfully obtained by Defendants from Plaintiffs are of such
9 a complicated nature that it would be difficult to ascertain the Plaintiffs' damages through
10 ordinary means.

11 168. Plaintiffs lack an adequate remedy at law.

12 WHEREFORE, Plaintiffs pray for an accounting by Defendants of benefits and
13 profits that were unfairly and/or unlawfully obtained from Plaintiffs by the Defendants.

14 **DEMAND FOR TRIAL BY JURY**

15 Plaintiffs demand a trial by jury with respect to all claims so triable.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

18 A. For a declaration that (1) Defendant Union Pacific lacks sufficient legal right
19 or title in the subsurface of its right-of-way to grant easements or to collect
20 rents associated with the occupancy of the subsurface, (2) Defendant Pipeline
21 lacks sufficient legal right or title to occupy the subsurface of the Railroad's
22 right-of-way, and (3) Defendants be barred and forever estopped from having
23 or claiming any right or title to the premises adverse to Plaintiffs;

24 B. For restitution, damages, disgorgement of benefits and/or profits according to
25 proof;

26 C. For punitive damages based on the Second Cause of Action for Trespass and
27 the Fourth Cause of Action for Unjust Enrichment;

28 D. For possession of their real property;

- 1 E. For an order quieting title in the subsurface real property in Plaintiffs' names,
2 free and clear of any claimed interest by the Defendants;
3 F. For a constructive trust in favor of Plaintiffs to be placed upon the benefits and
4 proceeds received by the Defendants;
5 G. For an accounting by Defendants of all benefits and profits that were unfairly
6 and/or unlawfully obtained from Plaintiffs by the Defendants;
7 H. For reasonable attorneys' fees;
8 I. For pre-judgment interest;
9 J. For costs of suit; and
10 K. For an order providing such other and further relief as this Court deems just
11 and proper.

12 Dated: December 4, 2017.

13 /s/ Kathryn Honecker

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that, on December 4, 2017, I electronically filed the above and foregoing with the Clerk of Court using the CM/ECF system, which transmitted notice of the filing to all counsel or record.

/s/ Kathryn Honecker
Kathryn Honecker